

1 ANNETTE L. HURST (SBN 148738)  
2 ahurst@orrick.com  
3 DANIEL D. JUSTICE (SBN 291907)  
djustice@orrick.com  
3 ORRICK, HERRINGTON & SUTCLIFFE LLP  
4 405 Howard Street  
San Francisco, CA 94105-2669  
Telephone: +1 415 773 5700  
5 Facsimile: +1 415 773 5759

6 WILLIAM W. OXLEY (SBN 136793)  
woxley@orrick.com  
7 ALYSSA CARIDIS (SBN 260103)  
acaridis@orrick.com  
8 ORRICK, HERRINGTON & SUTCLIFFE LLP  
355 S. Grand Avenue  
9 Los Angeles, CA 90071  
Telephone: +1 213 629 2020  
10 Facsimile: +1 213 612 2499

11 *Attorneys for GitHub, Inc. and Microsoft Corporation*

12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14 OAKLAND DIVISION

16 J. DOE 1, et al.,  
17 Individual and  
Representative Plaintiffs,  
18 v.  
19 GITHUB, INC., et al.,  
20 Defendants.

Case No. 4:22-cv-6823-JST  
Consolidated w/ Case No. 4:22-cv-7074-JST  
**NOTICE OF SUPPLEMENTAL  
AUTHORITY RELEVANT TO  
DEFENDANTS GITHUB AND  
MICROSOFT'S MOTIONS TO DISMISS  
PORTIONS OF THE FIRST AMENDED  
COMPLAINT IN CONSOLIDATED  
ACTIONS**

22 AND CONSOLIDATED ACTION

1           Defendants GitHub, Inc. (“GitHub”) and Microsoft Corporation (“Microsoft”) hereby  
 2 notify the Court of newly issued authority relevant to their Motions to Dismiss Portions of the  
 3 First Amended Complaint. ECF Nos. 107, 108. On November 20, 2023, the United States  
 4 District Court for the Northern District of California issued an order dismissing a number of  
 5 related claims, including claims for vicarious copyright infringement, claims under Section 1202  
 6 of the Digital Millennium Copyright Act (DMCA), claims under California’s Unfair Competition  
 7 Law, unjust enrichment, and negligence. Order Granting Mot. to Dismiss, *Kadrey v. Meta*  
 8 *Platforms, Inc.*, No. 23-cv-03417-VC (N.D. Cal. Nov. 20, 2023), ECF No. 56 (Chhabria, J.). In  
 9 pertinent part, the Court found that “[t]here are no facts to support the allegation that LLaMA  
 10 [Large Language Model Meta AI] ever distributed the plaintiffs’ books, much less did so ‘without  
 11 their CMI[,]’” which “is fatal to the Section 1202(b) claims.” *Id.* at 3 (citing *Free Speech Sys.,*  
 12 *LLC v. Menzel*, 390 F. Supp. 3d 1162, 1175 (N.D. Cal. 2019)). The Court further found that  
 13 “[t]he allegation that Meta violated Section 1202(a)(1) of the DMCA also fails because the  
 14 plaintiffs have not plausibly alleged that LLaMA is an infringing derivative work.” *Id.*

15           A true and correct copy of the order is attached hereto as Exhibit 1.

16           Dated: November 21, 2023

17           Orrick, Herrington & Sutcliffe LLP

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By: \_\_\_\_\_ /s/ *Annette L. Hurst*  
 20           ANNETTE L. HURST  
 21           Attorneys for Defendants  
 22           GitHub, Inc. and Microsoft Corp.  
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